

Commission on Health and Safety and Workers' Compensation

**MINUTES OF MEETING
May 5, 2004
San Francisco State Building
San Francisco, California**

In Attendance

Tom Rankin, Chairperson
Commissioners Allen L. Davenport, Leonard McLeod, Alfonso Salazar, Robert B. Steinberg,
Kirsten Schwenkmeyer, Darrel "Shorty" Thacker, and John C. Wilson
Christine Baker, Executive Officer

Call to Order

Chairperson Rankin called the meeting to order at 10:00 am.

Minutes from the May 5, 2004 Meeting

Chairperson Rankin asked for a motion on the minutes from the December 5, 2003 meeting.

CHSWC Vote

Commissioner Thacker moved to approve the minutes of the December 5, 2003 meeting. Commissioner Wilson and Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Chairman Rankin then introduced Andrea Hoch, the newly appointed Administrative Director of the Division of Workers' Compensation who introduced herself to the Commissioners and observers. Ms. Hoch noted that she started working at the Division of Workers' Compensation this week and stated that she is ready to work with everyone to implement the new reforms of Senate Bill 899, regulations and other issues.

Chairperson Rankin then asked Dick Gannon, outgoing Administrative Director to speak about the regulatory issues of Senate Bill 899.

Briefing on the Implementation of Reforms, Regulations and Other Issues

Richard P. Gannon, outgoing Administrative Director, Division of Workers' Compensation

Mr. Gannon briefed the Commission on the status of implementation of reforms. He commented that the Division of Workers' Compensation has been working with the Labor and Workforce Development Agency for a plan for adequate staffing of the courts and the implementation of SB 228. In reference to user funding, Mr. Gannon noted that the call for assessments went out on April 23rd. He commented that the user funding mechanism should ensure funding for DWC starting this fiscal year.

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He then proceeded to review the status of DWC regulations with regard to SB 228 and AB 227 reforms. With respect to fee schedules and medical provider lien filing fees, he noted that final regulations were submitted to the Office of Administrative Law (OAL) on April 30th. Until OAL approves regulations on fee schedules, the DWC emergency regulations will remain in effect. Mr. Gannon further noted that the carve-out regulations were submitted to OAL in April and were approved. He also stated that the second opinion spinal surgery regulations and the utilization review regulations, which have been posted on the DWC Forum site are currently in draft form. DWC is planning to adopt emergency regulations on utilization review during May. DWC is in the process of forming an advisory committee on electronic billing payment regulations.

Mr. Gannon then commented that DWC would have to implement regulations concerning the provisions of the newly enacted workers' compensation reform bill - Senate Bill 899. Some of the regulations that will have to be implemented include those concerning: PD rating schedule, independent medical review, medical provider networks, QME revisions, pre-designation of physician, Labor Code 5814 penalties and the return-to-work program.

Mr. Gannon further stated that he enjoyed working with the Commission on Health and Safety and Workers' Compensation and thanked CHSWC for its support during his term as AD. He also expressed his thanks to CHSWC for assisting DWC on the Judicial Study.

Chairperson Rankin then thanked Mr. Gannon for all of the work during his term as the Administrative Director of DWC.

Executive Officer's Status Report

Christine Baker, CHSWC Executive Officer

Ms. Baker thanked the Commission for the opportunity to brief them on staff activity over the last several months and the status of numerous projects.

- Commission staff had been working on the 2003 reform and is now working on the new 2004 reforms.
- Commission staff responded to many requests from Senator Burton and the Governor's office. Requests for information were based on the Commission's reports. The Commission became quite in demand because of its studies and repository of information.
- Prior to the reform legislation CHSWC's budget was on hold and was unable to expend funds. With the new legislation came reinstatement of a provision that would provide user funding for CHWSC and DWC. As of April 19, the budget has been available. There is an anticipated minor surplus before the end of the fiscal year that CHSWC would like to use for the purpose of adding to existing contracts for technical support to address some of the requirements of SB 899 and SB 228. Ms. Baker wanted to know if the Commission concurred on the use of these funds.

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Ms. Baker then briefed the Commission on several projects that are underway.

- Ms. Baker read an addition to Labor Code Section 77.5 regarding the requirement for CHSWC to “conduct a study and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care...” The Section also requires the Commission issue a report of its findings and recommendations to the administrative director by October 1, 2004 for the purpose of adopting a medical treatment utilization schedule. CHSWC and DWC conducted an RFP with monies available under DWC’s budget from the AB 749 mandate. Ms. Baker also read an addition to Labor Code Section 127.6 regarding a requirement that the administrative director of DWC in consultation with CHSWC and others conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses. RAND with Barbara Wynn as Principle investigator was awarded the contract. Ms Wynn has begun the study and the report will be completed in time for adoption of the protocols.
- CHSWC received a request by Senator Alarcon to do a study on 24-hour care. CHSWC is working with RAND on this. The study is expected to be completed by the end of May.
- Ms. Baker stated that several advisory group meetings have been held.
- Ms. Baker explained that state-to-state comparisons of injury rates have been successfully done for 1994-2002. It is the first time there will be reliable cross-state comparisons of injury and illness rates. UC Berkeley is currently finishing up the cross-state comparisons of lost workday rates and restricted workday rates. Again, this will be the first time there have been reliable cross state comparisons of differences in the time to return to work after injury. UC Berkeley is also finishing up the comparison of California industries to the national averages after controlling for the distribution of industry subgroups and employer size. The data collection and analysis will be completed in May. The write ups of the results are due in June and July. There is no expected delay in release of the report pending BLS disclosure analysis.
- Ms. Baker informed the Commission that EDD’s Labor Market Information Division has agreed to release to UC Berkeley data covering a 20% sample of all State Disability Insurance cases for the period 1991-2002. This is the first time these data have been made publicly available. A request for comparable data from CWCI/ICIS system will be completed as soon as the SDI data have been preliminarily evaluated. This data has extensive demographic variables to allow control for worker characteristics and diagnoses. With both sets of data the study will be able to examine the possibility of integrating workers’ compensation temporary disability and non-occupational disability insurance delivered through SDI. The objective is to calculate the advantages of integrating these systems to reduce administrative overlap, reduce litigation and reduce disability duration. The project will be complete by the fall, 2004 pending agreement on data with CWCI.

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- Ms. Baker stated that CHSWC has been visionary in establishing and supporting the premier young worker health and safety program in the nation. Approximately 10 other states are currently replicating our program. The Commission successfully established the California Young Worker Resource Network as mandated by AB 1599. The Network established a website with resources for youth, teachers, employers, job trainers and parents. There are nearly 200 hits a day. Safe Jobs for Youth Month expands in scope each year. Activities include the governor's proclamation, a teen poster contest, a newly added student journalism contest, and a mailing of teaching materials to schools throughout the state. There are Safe Jobs for Youth packets available to the Commission. In the upcoming year, the Young Worker Resource Network will continue this important work and will also: update its recommendations for protecting and educating youth, based on a successful statewide meeting with stakeholders held in March; increase direct youth involvement through partnership with the California Center for Civic Participation and Youth Development and others; and develop a training program, in collaboration with the WOSHTEP program, for restaurants, where a large portion of the youth workforce is employed.
- Ms. Baker expressed excitement about progress this year in implementing the Worker Occupational Safety and Health Training and Education Program (WOSHTEP) mandated by Labor Code Section 6354.7. CHSWC has concentrated on building a program that addresses the priorities set by the Labor Code, including: training for workers who can take a leadership role in injury and illness prevention, meeting the needs of occupational groups with special needs such as those who do not speak English as their first language, and addressing hazards that result in significant injuries, illness and compensation costs. CHSWC has convened a joint labor-management advisory board, conducted needs assessments with all stakeholders and shaped a program to address the range of needs and priorities expressed. As a result of extensive feedback, concentration has been in three areas: multi-lingual training resources, which are posted on CHSWC's web site and continue to expand, a Worker Occupational Safety and Health Specialist course and an alternative small business worker training model. CHSWC has worked on all of this in close collaboration with UCLA LOSH and LOHP at UC Berkeley. CHSWC has also contracted with faculty at SFSU who are conducting an independent evaluation of the pilot training with preliminary findings due by October 2004. Labor Code Section 6354.7 requires that the WOSHTEP labor-management advisory board prepare a written report evaluating the effectiveness of the programs developed. The Commission has the draft of this report to review.

CHSWC Study of Causation and Apportionment

Lachlan Taylor, CHSWC Staff Judge

Judge Taylor presented the Causation and Apportionment Study to the Commission. Judge Taylor commented that CHSWC was requested to do the study by Assemblyman Keene and Senator Poochigian. He further commented that Larry Swezey, Legal Consultant to the Commission prepared a detailed review of article on the evolution of California's law on causation and apportionment for the study and CHSWC staff collected data on other states concerning this issue.

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Judge Taylor reviewed the CHSWC recommendations of the study. The CHSWC study made recommendations that the laws on apportionment could reasonably be revised by: (1) Limiting the rule barring "retroactive" prophylactic restrictions. (2) Precluding a single employee from receiving PD awards exceeding 100 percent over his or her lifetime for the same part of the body, as defined. (3) Creating a presumption that a permanent disability once determined will continue to exist at the time of any subsequent industrial injury. (4) Nullifying the rule of *Ashley v WCAB* (1995) 37 CA4th 320, 23 CWR 216, 60 CCC 683, that one may not apportion to subsequent non-industrial conditions.

The new standard is not just to apportion out the disability that would have existed but for the injury, but also to apportion the disability according to causation.

Commissioner Steinberg asked if recommendations of the Causation and Apportionment Study were adopted in SB 899?

Judge Taylor responded that all of the recommendations made in the CHSWC study were incorporated into SB 899.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to approve the report on the Study of Causation and Apportionment. Commissioner Davenport moved to approve. Commissioner Wilson seconded and the motion passed unanimously.

Carve-Out Handbook

Christine Baker, CHSWC Executive Officer

Commissioner Steinberg remarked that his preliminary review of the Carve-Out Handbook seemed to suggest that it was promotional material for the carve-out system. He wished to add a cautionary note about the content of the document.

Commissioner Davenport asked Ms. Baker to make the handbook more consumer friendly because it is going to become a more popular way of doing business.

Ms. Baker stated that all work incorporated in the Handbook was based on previous studies. She believes the document is neutral and balanced for both employers and unions. It is user friendly as people can use the sample agreements found in the Handbook.

Chairperson Rankin asked when the study was done?

Frank Neuhauser replied, "1999."

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CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to approve the "Carve-Out" Handbook? Commissioner Davenport moved to approve. Commissioner Wilson seconded and the motion passed unanimously.

Update on the Study of Permanent Disability and Five State Study

Robert T. Reville, RAND

Dr. Reville congratulated the Commission on influencing the SB 899 legislation and other previous workers' compensation legislations.

Dr. Reville stated that the final results of the Study were presented on February 10, 2004 at the Permanent Disability Conference at USC. The final draft is currently being revised and will be completed this month. The draft on the Permanent Disability on Self-Insureds will also be completed in May.

On the question of implementation of portions of SB 899 with respect to ratings, at the request of CHSWC, Dr. Reville offered three ways that implementation could proceed:

- Use the report but there are some limitations to this.
- Create a crosswalk using data collection between AMA Guidelines and California's Permanent Disability system.
- The optimal approach would be data collection on injured workers over the course of the next several years. Unfortunately, this cannot be accomplished in time for the timelines found in SB 899.

Chairperson Rankin asked Ms. Baker if the Commission wished to add on to the RAND contract for the CHSWC Permanent Disability Study to including responding to the SB 899 provisions?

Commissioner Wilson asked if CHSWC has the funds.

Ms. Baker answered in the affirmative.

Commissioners Wilson and Davenport both commented that this has to be done since it is required by law.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to add on to the RAND contract for the CHSWC Permanent Disability Study to include responding to the SB 899 provisions. Commissioner Wilson moved to approve and the motion passed unanimously.

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WOSHTEP Presentation and Status Report

Robin Baker, Director, UC Berkeley, LOHP

Christine Baker, CHSWC, Executive Officer

Ms. Christine Baker introduced Ms. Robin Baker to present a status report on WOSHTEP. Ms. Baker informed the Commission that both she and Laurie Kominski from UCLA's Labor Occupational Safety and Health Program (LOSH) were available to answer any questions the Commissioners might have. Ms. Baker concentrated her comments on three areas of focus: multi-lingual training resources, the Worker Occupational Safety and Health Specialist course and an alternative small business worker training model. Ms. Baker also discussed availability of Resource Centers in both Northern and Southern California.

Commissioner Davenport asked how much use is there on the website with the multilingual resource list.

Ms. Baker stated that she did not have the data but could get the information. Ms. Baker agreed that there was a need for aggressive outreach.

Ms. Baker reported that the first pilot was completed in Oakland last month and that it went very well. There was a great deal of sharing of ideas with the participants and it was well received. A second training is now taking place at a specific workplace, a small manufacturing plant in Los Angeles. Staff from UCLA-LOSH are conducting this training. The third, with homecare workers in San Francisco is coming up. This training will be multilingual, in English with simultaneous translation in Spanish and Chinese. The fourth, a hospital in Bakersfield is on hold at the moment. The proposal to be considered by the Commission for next fiscal year contains a train-the-trainer curriculum, revision and finalization of the curriculum from this year, more training, and a broader training network. This model does not work for very small employers. To address this, LOHP will be developing short trainings, in the model of tailgate trainings, which employers or their designees can use to train employees. LOHP has agreed to do a pilot next fiscal year with restaurants that are generally small employers that employ youth. LOHP is developing this model with SCIF. LOHP plans to pilot test this model next year.

Commissioner Salazar had a question about marketing. He suggested contacting organizations such as the SBDC, financial development corporations and the Governor's office Small Business Advocate.

Ms. Baker agreed and stated that the WOSHTEP Advisory Board meeting will be coming up on June 2nd and these ideas will be discussed.

Commissioner Wilson suggested outreach through CHSWC and DIR's website and Cal/OSHA's website. In addition, Commissioner Wilson stated that the Joint Powers Agency includes 1000 school districts. They should have a link on their websites. Commissioner Wilson said he would provide this information to Ms. Baker.

Chairperson Rankin added that with the legislative requirement that insurer's must review their insured's IIPP's, insurers may need to be trained on how to look at these IIPP programs to make

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sure they work. He recommended coordinating with insurers with a course to assist them in reviewing IIPP's.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to continue its current contract with the Labor Occupational Safety and Health Program (LOSH) at UCLA for the Workers' Occupational Safety and Health Training and Education Program (WOSHTEP) for southern California. Commissioner Davenport moved to approve. Commissioner Salazar seconded and the motion passed unanimously.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to continue its current contract with the Labor Occupational Health Program (LOHP) at UC Berkeley for the Workers' Occupational Safety and Health Training and Education Program (WOSHTEP) for northern California. Commissioner Thacker moved to approve. Commissioner Davenport seconded and the motion passed unanimously.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to release the Draft WOSHTEP Report to the WOSHTEP Advisory Committee. Commissioner Thacker moved to approve and the motion passed unanimously.

CHSWC Vote

Chairperson Rankin asked for a motion on whether or not the Commission wished to continue its current contract with the Labor Occupational Health Program (LOHP) at UC Berkeley for the California Resource Network for Young Worker Health and Safety. Commissioner Davenport moved to approve. Commissioner Thacker seconded and the motion passed unanimously.

Vote on Report of CHSWC Study of the California WC Insurance Market by Hays Companies

Christine Baker, CHSWC Executive Officer

Ms. Baker stated that the Hays Report had been distributed for public comment. Three responses were received, including one from a previous employee of Hays who worked on the study.

Chairperson Rankin mentioned the CIGA issue on high deductible policy not being taxed.

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Ms. Baker agreed but said more work needs to be done and Commission staff needs time to look at this and other issues regarding the report.

Chairperson Rankin said that work should be done by CHSWC staff on high deductible policies before the next meeting.

Commissioner Wilson expressed surprise that only three responses were received given the kinds of recommendations found in the report. He added that many of the recommendations deserve a response from the agencies to whom they were directed, i.e. Department of Insurance, SCIF, etc. He suggested that the recommendations that have already been implemented be taken off the plate.

Chairperson Rankin decided that no vote would be taken on the report at this meeting.

Other Business /Proposals/Public Questions and Comments

Commissioner Wilson brought up the need to deal with the issue of terrorism in California.

Ms. Baker stated that the Commission has always been on the cutting edge in areas for best practices, carve-outs, 24-hour care. She suggested that we bring these issues into a forum setting. In addition, she suggested that the Commission might wish to hold a forum on how the impact of terrorism affects the workers' compensation system.

Commissioner Davenport noted that his union lost 24 members on September 11st. He suggested that the forum be broader in scope and should refer to all disasters not just terrorism.

Chairperson Rankin directed Ms. Baker to go ahead with planning the best practice and disaster response forums and to come up with a plan by the next Commission meeting in June.

Other business:

Robin Nagel, Disability Management Specialist introduced herself and thanked Christine Baker for her idea of the public on best practices. She suggested in preparing the best practice forum that CHSWC contact well-established member organizations such as the Public Agency Risk Manager Association (PARMA) and the Disability Management Employer Coalition.

Commissioner Salazar made the suggestion to see if the administration would allocate Federal Homeland Security funds for the disaster recovery forum.

There were no further matters for discussion and the meeting was adjourned at 11:35 am.

Approved:

Respectfully submitted,

Chair

Date

Christine Baker, Executive Officer Date